

**BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT  
PANEL A**

**FILED**

IN RE:        MAX M. HORNER, JR, Respondent  
              Arkansas Bar ID#2001067  
              CPC Docket No. 2009-085

FEB 23 2010

**FINDINGS AND ORDER**

**LESLIE W. STEEN  
CLERK**

The formal charges of misconduct upon which this Findings and Order is based arose from information provided to the Committee by Mr. Harold Patricoff, Esquire and Ms. Sandra Upegui, Esquire. The information related to the representation of KLM Petroleum by Respondent, Max M. Horner, Jr., an Arkansas-licensed attorney, practicing primarily in Pulaski County, Arkansas.

Max M. Horner, Jr., acted as counsel for KLM Petroleum, Inc. (KLM), which had its principal place of business in Arkansas. KLM purchased large quantities of aviation fuel from World Fuel, a Texas corporation with its principal office in Miami-Dade County, Florida, and failed to pay for the fuel. World Fuel obtained a judgment in Federal Court against KLM in the amount of \$348,247.63.

World Fuel, through its Miami counsel, Harold E. Patricoff and the law firm of Shutts & Bowen, LLP, filed an original suit in federal court in Florida to recover the money owed to World Fuel by KLM for purchase of the fuel when KLM failed to pay the invoices. On August 23, 2007, Max Horner faxed a letter to Patricoff offering to settle World Fuel's claim after a closing that was scheduled for 2:00 p.m. on August 24, 2007, in exchange for World Fuel's dismissal of the lawsuit. By letter dated August 24, 2007, and faxed to Horner, World Fuel accepted the offer. The first lawsuit would be dismissed without prejudice when Horner provided confirmation by noon on Monday, August 27, 2007, that he had in his trust account \$355,186.35 plus \$2,000.00 in attorney's fees and that the funds would be deposited in World Fuel's counsel's trust account on or before September 4, 2007.

Having failed to receive the money as agreed, World Fuel filed a second lawsuit on September 7, 2007, in the United States District Court for the Southern District of Florida, Miami Division. This second lawsuit named KLM Petroleum Services, LLC., Tri-State Petroleum, Inc., and Max M. Horner, Jr., as defendants. Horner was served with the Complaint and requested additional time to respond which was granted. After the Court's Order granting the additional time, Horner filed a Motion for Extension of Time to do research and a Motion to Dismiss on October 10, 2007. Subsequently, on November 13, 2007, the parties entered into a Settlement Stipulation, whereby proceedings against Horner would be stayed pending payment by KLM as set forth in the agreement. If KLM defaulted, the suit would be reinstated against all defendants. Later, KLM failed to make payments as agreed and World Fuel requested that the suit be reinstated. The District Court entered an Omnibus Order on January 24, 2008, reinstating the proceedings and on March 4, 2008, the court entered a default judgment against defendant KLM.. The court entered default judgment against defendant Tri-State Petroleum on March 31, 2008, and reserved jurisdiction over the remaining defendant, Horner.

On July 18, 2008, the District Court Judge entered a Joint Scheduling Order requiring the parties to comply with the discovery schedule, which among other things, required the parties to serve their initial disclosures by August 4, 2008. On August 15 and September 15 respectively, World Fuel filed a Motion for Sanctions against Max Horner for failure to serve his initial disclosures by the due date and a Motion to Compel better answers to interrogatories and responses to requests for documents. Among other things, the court scheduled a hearing on these two motions for October 6, 2008. Horner filed a Motion for Continuance, however, the Court had already granted the motions when Horner's continuance motion was received and the Court denied as moot Mr. Horner's motion. The Court entered an Order granting Plaintiff's Motion for Sanctions against Horner for failure to comply with its October 7, 2008, Order. In that order, the court stated that "Horner, an attorney, knew or should have known of his discovery

obligations and the necessity of complying with court dates. Such disregard by Horner clearly indicates to this Court that his conduct exemplifies one of willfully disregarding court orders and litigation obligations.” On November 25, 2008, the court entered a final judgment after default against Horner in the amount of \$341,826.23.

Upon consideration of the formal complaint and attached exhibit materials and the Arkansas Rules of Professional Conduct, Panel A of the Arkansas Supreme Court Committee on Professional Conduct finds:

1. That Max M. Horner Jr.’s conduct violated Rule 3.4(c) when (a) he disobeyed the July 18, 2008, Scheduling Order of United States District Court, Southern District of Florida, by his failure to comply with the court’s mandate that all parties serve their Initial Rule 26 Disclosures no later than August 4, 2008, (b) he failed to appear on October 6, 2008, as ordered by the Florida District Court in its September 16, 2008, order, and (c) he failed to comply with the District Court’s October 7, 2008, Order. Rule 3.4(c) requires that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists.

2. That Max M. Horner Jr.’s conduct violated Rule 8.4(d) when as an officer of the court, Mr. Horner failed in his special responsibility to conform his conduct to the requirements of the law and to demonstrate respect for the legal system and those who serve it, including judges and other lawyers, when he failed to comply with the court’s orders and opposing counsel’s discovery requests in United States District Court for the Southern District of Florida Case No. 1:07-cv-22348, *World Fuel Services Inc., v. KLM Petroleum Services, LLC, Tri-State Petroleum, Inc.*, and *Max M. Horner, Jr.* Rule 8.4(d) provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**WHEREFORE**, it is the decision and order of the Arkansas Supreme Court Committee on Professional Conduct, acting through its authorized Panel A, that Max M. Horner, Jr,

Arkansas Bar ID# 2001067, be and hereby is, CAUTIONED for his conduct in this matter.

Pursuant to Section 18.A of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law (2002), Mr. Horner is assessed the costs of this proceeding in the amount of \$50. The costs assessed herein, totaling \$50, shall be payable by cashier's check or money order payable to the "Clerk, Arkansas Supreme Court" delivered to the Office of Professional conduct within thirty (30) days of the date this Consent Findings and Order is filed of record with the Clerk of the Arkansas Supreme Court.

ARKANSAS SUPREME COURT COMMITTEE  
ON PROFESSIONAL CONDUCT - PANEL A

By:   
L. Benton Smith, Chair, Panel A

Date: February 23, 2010